

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CHRISTOPHER PECHO, individually)	
and on behalf of similarly situated)	
individuals,)	
)	
Plaintiff,)	Case No. 1:21-cv-6202
)	
v.)	
)	(Removed from Circuit Court of Cook
FITTINGBOX INC., a Delaware)	County, IL, Case No. 2021-CH-05066)
Corporation; MAUI JIM, INC., an)	
Illinois Corporation; and MAUI JIM)	
USA, INC., an Illinois Corporation,)	
)	
Defendants.)	

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1441 and the Class Action Fairness Act of 2005 (“CAFA”), codified at 28 U.S.C. §§ 1332(d) and 1453(b), Defendant Fittingbox Inc., by and through its undersigned counsel, and reserving all defenses and objections, respectfully removes this action, titled *Pecho v. Fittingbox Inc., et al.*, filed in the Circuit Court of Cook County, Illinois, Case No. 2021-CH-05066 (the “State Court Action”), to the United States District Court for the Northern District of Illinois. This putative class action is subject to this Court’s jurisdiction under 28 U.S.C. § 1332(d) because minimal diversity exists and the alleged amount in controversy exceeds \$5,000,000. In support of removal, Fittingbox Inc. states as follows:

I. BACKGROUND

1. Plaintiff Christopher Pecho, individually and on behalf of a class of similarly situated individuals (“Plaintiff”), filed his amended complaint (the

“Complaint”) in the State Court Action against Fittingbox Inc. and co-defendants Maui Jim, Inc. and Maui Jim USA, Inc. (together, “Maui Jim”) on October 18, 2021. A true and correct copy of the Complaint, as well as all other documents filed in the State Court Action, is attached as **Exhibit A**.

2. Fittingbox Inc. was served with the Complaint on October 22, 2021. (Declaration of Christopher Baste (“Baste Decl.”), attached as **Exhibit B**, at ¶ 3.)

3. The Complaint alleges that Fittingbox Inc. and Maui Jim captured, collected, disseminated, and/or otherwise used Plaintiff’s biometrics, in the form of alleged facial scans or facial geometry, in violation of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1, *et seq.* (“BIPA”). (See Compl. ¶ 2.) The one-count Complaint alleges a claim for various BIPA violations. (See Compl. ¶¶ 46-56.)

II. BASES FOR REMOVAL

A. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(d).

4. CAFA grants federal district courts original jurisdiction over all civil actions in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and which is a class action in which either: (1) any member of a class of plaintiffs is a citizen of a State different from any defendant; or (2) any member of a class of plaintiffs is a citizen of a State and any defendant is a citizen or subject of a foreign state. 28 U.S.C. § 1332(d)(2). These requirements are met in this case.

B. This matter is a class action.

5. A “class action” under CAFA is defined as “any civil action filed under

rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action.” 28 U.S.C. § 1332(d)(1)(B). The Complaint was filed as a putative class action pursuant to 735 ILCS § 5/2-801. (Compl. ¶ 38.)

6. Plaintiff seeks to represent a “Fittingbox Class” that consists of “[a]ll individuals whose biometrics were captured, collected, stores, used, transmitted, and/or disseminated by Defendant Fittingbox within the state of Illinois any time within the applicable limitations period” and a “Maui Jim Subclass” that consists of “[a]ll individuals whose biometrics were captured, collected, stored, used, transmitted, and/or disseminated by Defendant Maui Jim within the state of Illinois any time within the applicable limitations period.” (*Id.*)

C. Minimal diversity exists.

7. Plaintiff is a citizen of the state of Illinois. (Compl. ¶ 17.)

8. A corporation “shall be deemed to be a citizen of every [s]tate and foreign state by which it has been incorporated and of the [s]tate or foreign state where it has its principal place of business.” 28 U.S.C. § 1332(c)(1). Fittingbox Inc. is a Delaware corporation with its principal place of business in Florida (Compl. ¶ 15; Baste Decl. ¶ 4), and therefore is a citizen of Delaware and Florida.

D. The amount in controversy exceeds \$5,000,000 exclusive of costs and interest.

9. “[T]he claims of the individual class members shall be aggregated” for purposes of determining the amount in controversy under CAFA. 28 U.S.C. § 1332(d)(6).

10. The Complaint alleges that “there are at least thousands of members of the Class and Subclass.” (Compl. ¶ 40.)

11. The Complaint seeks, on behalf of the putative Class and Subclass, and among other things, “statutory damages of \$5,000 for each willful and/or reckless violation of BIPA, pursuant to 740 ILCS 14/20(2).” (Compl. ¶ 56(d).)

12. Thus, even assuming there are just 1,001 members of the Class and Subclass—a gross underestimate given Plaintiff’s allegation that there are “at least” *multiple* thousands of members—the amount in controversy exceeds \$5,000,000 (\$5,000 per violation x 1,001 violations = \$5,005,000).

E. The procedural requirements for removal are satisfied.

13. **Removal is timely filed.** A Notice of Removal “shall be filed within 30 days after receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based.” 28 U.S.C. § 1446(b)(1). Plaintiff served Fittingbox Inc. with the Complaint and Summons on October 22, 2021. (Baste Decl. ¶ 3.) This Notice of Removal is being filed on November 19, 2021, less than 30 days after October 22, 2021.

14. **Removal to proper court.** This Court is part of the “district and division embracing” Cook County, Illinois, where the State Court Action was filed. *See* 28 U.S.C. § 1441(a).

15. **Consent to removal.** Under CAFA, any defendant is entitled to remove a class action without acquiring other defendants’ consent to removal. 28 U.S.C. § 1453(b) (“A class action may be removed to a district court of the United

States in accordance with section 1446 . . . without the consent of all defendants”). Nevertheless, defendants Maui Jim, Inc. and Maui Jim USA, Inc. do not oppose removal.

16. **Notice.** Pursuant to 28 U.S.C. § 1446(d), promptly after filing this Notice of Removal, Fittingbox Inc. will serve written notice of the filing on all parties and will file a copy of the Notice of Removal with the Clerk of the Circuit Court of Cook County, Illinois. A true and correct copy of the Notice of Filing of Notice of Removal that will be promptly served on all parties and filed with the Circuit Court of Cook County, Illinois is attached hereto as **Exhibit C**.

17. **Pleadings and process.** Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders filed in the State Court Action are attached hereto as **Exhibit A**.

18. **Non-waiver of defenses and objections to Plaintiff's Complaint.** By filing this Notice of Removal, Fittingbox Inc. does not waive any defenses, objections, or counterclaims that may be available to it or that may be asserted in an answer or other pleading filed in response to the Complaint, including without limitation a motion to dismiss pursuant to Federal Rule of Civil Procedure 12.

WHEREFORE, the Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1332, Fittingbox Inc. hereby removes the above-titled action from the Circuit Court of Cook County, Illinois for further proceedings and adjudication in this District Court in accordance with 28 U.S.C. §§ 1441 and 1446.

Dated: November 19, 2021

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Respectfully Submitted,

FITTINGBOX INC.

By: /s/ Daniel I. Konieczny
One of Its Attorneys